IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.19 OF 2005

Master Krishna)
@ Chotu Om Prakash Jaiswal)
presently in custody at the)
Mumbai Central Prison, Arthur Road,)
Mumbai - 400 011.)..Petitioner

Versus

1. Officer-in-charge,)
Bandra Police Station,)
Bandra, Mumbai.)

2. The Superintendent,)
Mumbai Central Prison,)
Arthur Road, Mumbai - 400 011.)

3. State of Maharashtra,)
through its Law and Judiciary)
Department, M.Kama Road,)
Mumbai 400 032.)..Respondents

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Ms Maharukh Adenwalla with Dr.Y.M.Chaudhary for the petitioner.

Shri Bharat H. Mehta, APP for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 6th MAY, 2005.

JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner is making a grievance of violation of the Juvenile Justice (Care and Protection of Children) Act, 2000, hereinafter called as "the said Act", by the respondents and also of a total unconcern shown in that regard by the Court below, and seeking various directions for due implementation of the provisions of the said Act as well as to enable the petitioner and other juvenile offenders to avail the legal aid facilities for the purpose of effective defence in the criminal cases.

3. Few facts relevant for the decision are that the petitioner was arrested by the first respondent/ police station on 23rd April, 2004 and, after obtaining the police custody for some time, was remanded to the judicial custody. The charge sheet was filed before the learned Metropolitan Magistrate at Bandra on 5th May, 2004 but the petitioner was not produced before the said Court. The case was committed to the Sessions Court on 25th May, 2004 and it came to be registered as Sessions Case No.359 of 2004. On 5th July, 2004, the learned Sessions Judge passed the order for conducting medical examination to ascertain age of the petitioner. The medical examination of the petitioner was conducted and the

report was issued by Grant Medical College, J.J. Hospital, disclosing the petitioner to be of the age of 18/19 years. The said report was submitted to the Court on 12th July, 2004. However, in the absence of the Presiding Officer of the Court, no action was taken on the said medical report and the petitioner continued to languish in the jail.

4. It is the case of the petitioner that though the petitioner was produced in the Court on 12th July, 2004 the date on which the medical report was filed, no action was taken on the said medical report. However, on 29th July, 2004, the learned Presiding Officer of the Court Room No.16, on perusal of the said report, forwarded the same to the Court Room No.41 on the ground that the case of the petitioner was pending before the said Court i.e. Court No.41, and in view of the change in the assignment, he was holding the charge of Court No.41 and that therefore, the report was directed to be kept with the R & P of Sessions Case No.359 of 2004. Even thereafter and during the period from 27th July, 2004 till 14th December, 2004, there were as may as 11 dates on which the matter was adjourned but out of those 11 dates, the petitioner was produced in the Court only on two occasions viz. 23rd August, 2004 and 26th October,

2004. However, he was not produced before any Judge and the clerk of the Court itself adjourned the matter and gave the date for further hearing.

5. In view of the various allegations regarding non-compliance of the provisions of the said Act and mere adjournment being granted on the ground of absence of the Presiding Officer of the Court below, the report was called for from the Sessions Court, Mumbai, as regards the petitioner's case. We have perused the said report.

6. It is the contention on behalf of the petitioner that inspite of the fact that the petitioner's case was ascertained on 9th July, 2004, and the report in that regard was furnished to the Sessions Court on 10th July, 2004, no action was taken on the said report even though the petitioner was revealed to be the juvenile offender within the meaning of the said expression under the said Act. It is the further contention that during the period from July, 2004 till December last, the proceedings were adjourned without being placed before the judicial authority and the dates were being given by the clerk of the Court without any authority, and consequently the petitioner was made to languish in the jail in

total disregard to the obligations of the respondents under the said Act, and he was denied of the rights assured under the said Act. It is, therefore, the contention of the petitioner that whenever the Presiding Officer of the Court is absent or not available, the accused should be ordered to be produced before the judicial officer holding charge of the Court. This, according to the learned Advocate for the petitioner, is absolutely necessary to ensure that the judicial officer should take an appropriate action particularly as regards the juvenile offenders and they are not made to languish in the jail in total disregard to the provisions of the said Act and the rights assured to them under the said Act. If the petitioner was produced before the judicial officer on 12th July, 2004, the former would have noticed from the records that the medical examination report relating to the petitioner disclosed the age of the juvenile offender, and could not have been ordered to be languished in the jail. According to the learned Advocate for the petitioner, therefore, it is necessary to ensure production of the accused person before the judicial officer holding the charge of any vacant Court.

7. Perusal of the records including the report

from the Court below, undoubtedly discloses that even though the medical report regarding the age of the petitioner was placed on record on 12th July, 2004, the Court below did not take appropriate step to ensure that the petitioner's right under the said Act were not violated nor the respondents herein took appropriate steps in that regard. Indeed, it was primary obligation of the investigating agency to bring to the notice of the Court that considering the age factor of the petitioner, he was a juvenile offender within the meaning of the said expression under the said Act, and therefore, was required to be dealt with in accordance with the provisions of the said Act, and that the petitioner could not have been permitted to be languished in the jail. The petitioner is, therefore, justified in seeking direction to the investigating agencies to the effect that whenever the accused is produced before the Court and if the judicial officer is found absent or on leave or for whatever reason the Court is found vacant, it should ensure the production of the accused before the judicial officer holding the charge of such court and care should be taken more particularly in the cases where the juvenile offenders are involved, so that the rights assured to them under the said Act are not violated.

8. Considering the financial difficulties faced by the petitioner and the accused persons like the petitioner, it is the contention of the petitioner that proper facility like legal aid services should be provided to the accused persons in the jail premises itself. According to the learned Advocate for the petitioner, if such facility is made available, there would be no incidence like the case in hand whereby a juvenile offender can be treated in a manner which is clearly not permissible under the provision of law. Had there been a lawyer to assist the petitioner at the time when he was brought before the Court on 12th July, 2004, there would have been no difficulty for the petitioner to apprise the Court regarding juvenility of the petitioner. The petitioner, therefore, contends that the respondents should be directed to make legal aid facility available in the jail premises itself.

9. Though the petitioner had not joined the Maharashtra State Legal Services Authority as the party respondent to the proceedings, a notice was issued to the said authority to putforth before the Court the steps taken by the said authority in this regard. The affidavit filed by the Member Secretary

of the said authority discloses elaborate steps taken by it to provide legal aid services in the State of Maharashtra and the same also discloses that the sufficient arrangement has been made for the undertrial prisoners languishing in the jail to avail such facility. Evidently, unless the accused is willing to avail such facility, the respondents cannot be blamed for the failure on the part of the accused persons to take benefit of such legal aid facility available to them. The efforts which are being made by the said authority are appreciable and the affidavit clearly discloses that the authority is taking necessary steps in the right direction and therefore, it does not require any direction from this Court in that regard, at this stage, and therefore, the request for direction in relation to the legal aid services is to be rejected.

10. It is also the contention of the petitioner that there is always inordinate delay in transmitting the proceedings from the Court of the learned Magistrate to the Court of Sessions, consequent to the order for committal being passed by the learned Magistrate. However, apart from making mere allegation in that regard, no material as such has been placed on record in support of the said

contention. It may be that, in a given case occasionally there may be some delay for various reasons. Unless the case of total negligence or carelessness in the matter of transmission of records is brought to the notice of this Court, it is too premature for this Court to issue any direction in that regard. There are necessary provisions in the criminal manual in respect of the procedure to be followed and unless it is disclosed that those provisions are not complied with, it is not necessary for this Court to issue any direction in this regard.

11. It is further contention of the petitioner that the Maharashtra State Legal Services Authority should be directed to make sufficient facility and assistance available to the undertrial prisoners in the prison area itself. The petitioner contends that such a facility in the Central Prison at Arthur Road, Mumbai, is absolutely necessary. In this regard, the Member Secretary of the said authority, under his affidavit, has assured that the appropriate steps will be taken for providing necessary legal aid to the undertrial prisoners including the prisoners in Mumbai. The necessary scheme in that regard has been disclosed in the affidavit and if that is implemented, in our considered opinion, it would meet the ends of

justice and the interest of the undertrial prisoners will be sufficiently safeguarded. Besides, as already observed above, the said authority is taking appropriate steps for providing legal aid services to all the needy persons in the State of Maharashtra and it is not necessary for this Court, at this stage, to issue any direction in that regard. Suffice to observe that the steps sought to be taken by the authority to provide legal aid services are to be sincerely and effectively implemented and enforced with all necessary support from the State Government in that regard.

12. In the result, therefore, the petition partly succeeds and the rule is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(P.V.KAKADE, J)